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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/823,013

04/12/2004

Stephen Michael McMahon

822.173

4688

7590

12/20/2004

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EXAMINER

RAEVIS, ROBERT R

ART UNIT

PAPER NUMBER

2856

DATE MAILED: 12/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/823,013

Applicant(s)

MCMAHON, STEPHEN MICHAEL

Examiner

Robert R. Raevis

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-13 is/are pending in the application.
- 4a) Of the above claim(s) 8,9 and 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6,7,10,12,13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11/15/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

-- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

### DETAILED ACTION

Election of Figures 1-5B is acknowledged. As to Applicant's traversal, there are thousands of references in the Examiners search files regarding shafts and bores.

Some associate an annular flange with a shank (like elected Figures 1-5B), and others associate an annular flange with a housing (non-elected Figure 6). Regardless, Applicant's claims are directed to two patentably distinct species.

Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 13, this claim is indefinite as it includes limitations in an alternative form to two patentably distinct species. As Applicant elected the species of Figures 1-5B, he will have to delete reference to the species of non-elected Figure 6.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3,10,12,13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor in view of Schellin.

Taylor teaches a materials tester that employs an analyzer assembly 14 and vacuum tube 102 whose rearward end connects to a vacuum source. The tube penetrates into the ground, which is necessary to carry out sampling.

Taylor does not illustrate use of a coupling device.

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As to claims 1-3,10,12,13 it would have been obvious to employ Schellin's coupling device (Figure 1) to permit for a plurality of tubes to be connected together to provide sufficient length to sample/analyze material from a depth of interest. Schellin's coupling device (Figure 1) includes a housing B having a bore and groove; interfacier A having a shank, shoulder and annular flange a on the shank; and resilient member D.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor in view of Schellin as applied to claim1 above, and further in view of Brekke.

As to claim 4, it would have been obvious to employ a ball assembly with Schellins's coupling as Brekke teaches (Figure 11) that a ball will permit for a test element 37c to be securely attached within a line 196c. Such an assembly requires a straight groove in the interior element for the ball to recess therein.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor in view of Schellin as applied to claim1 above, and further in view of Barr.

As to claims 6,7, it would have been obvious to employ a gasket with interior positioned spring as Schellin's gasket as Bar teaches that use of a spring permits for fluid conduits to be sealingly wedged together.

As to Applicant's REMARKS, the subject matter of clam 5 has not been incorporated into all of the independent claims that are directed to only elected Figures 1-5B. Obviously the claims are not directed to a hardness tester, which was expressly so in claim 5. No further comment is necessary.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert R. Raevis whose telephone number is 571-272-2204. The examiner can normally be reached on Monday to Friday from 6:30am to 4:00pm. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Robert R. Raevis*  
RAEVIS